The charge in that case was one under section 131(1)(e) of the Customs Ordinance 1952 (which has since been replaced by section 135(1)(e) of the Customs Act, 1967) where the word "knowingly" appears but it is obvious from the judgment that Azmi L.P. had also dealt with the effect of section 131(2) (which has since been replaced by the present section 135(2)).

Again in *Sherras* v. *De Rutzen*[3] which was an appeal against conviction under section 16(2) of the Licensing Act, 1892 for having unlawfully supplied liquor to a police constable on duty without having the authority of a superior for so doing Day J. in allowing the appeal at page 921 said:

"An argument has been based on the appearance of the word 'knowingly' in sub-section 1 of section 16, and its omission in sub-section 2. In my opinion the only effect of this is to shift the burden of proof. In cases under sub-section 1 it is for the prosecution to prove the knowledge, while in cases under sub-section 2 the defendant has to prove that he did not know. That is the only inference I draw from the insertion of the word 'knowingly' in the one sub-section and its omission in the other."

It may be noted here that by virtue of the said section 135(2) even in cases under (d) (e) and (g) the burden of proof has been shifted to the defence but as stated by Azmi L.P. at page 271 in the same case referred to earlier the quantum of proof is "proof on the balance of probabilities as in civil proceedings."

The learned President had therefore erred in finding that guilty knowledge was not relevant. It is unfortunate that he had not considered the appellant's second line of defence as there was evidence adduced by both sides from which he could have made a decision. After considering the circumstances of the case I am of the view that this is not a proper case where a new trial should be ordered. As the appellant is a foreigner and has been in custody from 18th January 1974 when he was arrested till 26th March 1974 when he was convicted and has been serving his imprisonment since that date and as a new trial would necessarily involve further delay it would not, in my view, be in the interests of justice to make such an order.

I would therefore proceed to review the evidence on record and decide the appeal on its merits as has been urged upon me by both counsel for the appellant and the learned Deputy Public Prosecutor. The appellant had said not only that he did not know that a licence was required for bringing in the rice but also that on his previous visit when he also brought some rice no responsible officer of the vessel had asked him to fill in any form for the purpose of getting a licence or for any other purpose. Guilty knowledge can be inferred from the surrounding circumstances of a case and it has been submitted by the learned Deputy Public Prosecutor that since the import of rice into this country without a licence had been prohibited many years before the alleged offence was committed and as the appellant who came from neighbouring Thailand had been to this country before it was highly improbable that he had not known it. There is also evidence given by PW4 that though all the crew present had remained silent when he asked them who was the person in charge of the store the appellant had gone to the storeroom and unlocked it soon after PW 4 had walked away from it and it is further submitted by the learned Deputy Public Prosecutor that the appellant's conduct would show that he had guilty knowledge. I am inclined to agree with the learned Deputy Public Prosecutor and since the learned President had not accepted the appellant's story that the rice was *bona fide* "in transit" I am of the view that had he considered the evidence before him he would not also have accepted, on a balance of probabilities, the appellant's story that he did not know that a licence was required for bringing (*i.e.* importing) the rice into the Federation.

I would therefore dismiss the appeal and confirm the conviction. As in my view the 12 months' imprisonment in default of payment of the fine is in the circumstances of this case manifestly excessive I would reduce it to six months.

Appeal dismissed.

Solicitors: *Tay Leong Siak & Co.*

WOO YOK WAN v. LOO PEK CHEE

[O.C.J. (Ajaib Singh J.) September 17, 1974]
[Seremban — Civil Suit No. 127 of 1974]

Land Law — Tenancy agreement for twelve years relating to ground floor of premises — Notice issued terminating tenancy — Proprietor making agreement to sell premises — Tenant lodging private caveat and commencing action for specific performance of tenancy agreement — Proprietor applying by summons-in-chambers for removal of caveat — Whether tenant has registrable interest and can enter caveat — Whether caveat valid — Whether equitable principles applicable in Malaysia — Civil Law Act, 1956, s. 6 — National Land Code, ss. 323(1)(a), 323(2).

Practice and Procedure — Application for removal of caveat — Whether can be brought by summons-in-chambers in pending suit.

The defendant was the registered proprietor of land, on which stood a double-storey shophouse. The defendant had entered into a tenancy agreement with the plaintiff whereby the defendant let out the front portion of the ground floor and a room at the rear of the shophouse to the plaintiff. Action having been taken by the Seremban Town Council for the closing down of the premises on the ground that the building was in a dangerous condition the defendant served a notice to quit to the plaintiff. The defendant also entered into an agreement for the sale of the shophouse. The plaintiff lodged a private caveat in respect of the whole of the land and filed a writ in effect asking for specific performance of the tenancy agreement. The defendant applied by summons-in-chambers in the suit to have the caveat removed.

Held: (1) where there was a pending action in court relating to the lands which were the subject matter of the caveat, an application for the removal of the caveat can be made by summons-in-chambers in the suit;

(2) in this case equity would treat the agreement as an agreement for a lease and specifically enforce it and therefore the plaintiff had a registrable interest within the meaning of section 323(1)(a) of the National Land Code in respect of the portion of the land let out to her; and she was entitled to lodge a caveat against that portion of the land;

(3) as the caveat in this case was lodged against the whole of the land and as the plaintiff's claim was restricted to only a portion of the land, the caveat was bad and should be removed.

Cases referred to:-

(1) *Nanyang Development (1966) Sdn. Bhd.* v. *How Swee Poh* [1969] 1 M.L.J. 232.

(2) *Tee Chin Yong* v. *Ernest Jeff* [1963] M.L.J. 118.

(3) *Chi Liung & Sons Sdn. Bhd.* v. *Chong Fah & Sons Sdn. Bhd. & Anor.* [1974] 2 M.L.J. 211.

(4) *Walsh* v. *Lonsdale* (1882) 21 Ch.D. 9.

(5) *Cheong Lep Keen & Anor.* v. *Tan Tin Kek* [1968] 2 M.L.J. 126; [1970] 1 M.L.J. 7.

(6) *S.T.S.P. Raman Chettiar* v. *Teo Gee & Anor.* [1936] M.L.J. 160.

(7) *Inter-Continental Mining Co. Sdn. Bhd.* v. *Societe Des Etains De Bayas Tudjuk* [1974] 1 M.L.J. 145.

(8) *Parker* v. *Taswell* (1858) 2 De. G. & J. 599; 44 E.R. 1106.

(9) *Lin Nyuk Chan* v. *Wong Sz Tsin* [1964] M.L.J. 200, 204.

CIVIL SUIT.

S. K. Lingam for the applicant/defendant.

P. S. Maniam for the respondent/plaintiff.

Ajaib Singh J.: This is an application by the defendant by way of summons-in-chambers for the removal of a private caveat entered by the plaintiff in respect of the defendant's land held under Certificate of Title No. 245 Lot 947 in the Town of Seremban.

The facts leading to the present application may be briefly stated. The defendant is the registered owner of land known as Lot 947 on which stands a double storey shophouse No. 13 Carew Street, Seremban. On 1st April, 1964, the defendant entered into a written tenancy agreement with the plaintiff whereby the defendant let out the front portion of the ground floor and a room at the rear of the shophouse to the plaintiff at a monthly rental of $60 for a period of 12 years commencing 1st April, 1964, together with furniture in the premises for which the plaintiff was to pay an additional monthly rental of $140 for the same period of 12 years. Upon the execution of the agreement on 1st April, 1964, the plaintiff went into occupation of the premises rented out to her. In the agreement it was provided, *inter alia*, that the plaintiff, her employees, agents and customers shall have access to the rear portion of the premises and have the use of the kitchen, bathroom and lavatory. It was also provided that the plaintiff shall peacefully enjoy the demised premises and use the furniture without any interruption from the defendant and that the plaintiff shall during the tenancy white wash, paint, repair and keep the premises in good and sanitary condition. Major repairs, however, were to be carried out by the defendant.

On 9th March, 1974, the defendant was served with an order by the Chairman, Town Council, Seremban, issued under section 76 of the Town Boards Enactment, prohibiting any person from entering or remaining in premises No. 13 Carew Street, Seremban, on the ground that the building was in a dangerous condition. Copies of this order were also posted on the building itself. Subsequently, on 10th April, 1974, the defendant caused a notice to be served on the plaintiff terminating the tenancy on 31st May, 1974. Meanwhile, the defendant proceeded to sell her shophouse for $115,000 and on 11th May, 1974, she received a deposit of $35,000 from two joint purchasers with the balance to be paid upon presentation of the transfer free from all encumbrances. A transfer was duly executed on 22nd May, 1974, and the balance of the purchase price of $80,000 was deposited with the defendant's solicitors. In due course the solicitors for the defendant caused a search to be made at the Land Registry and on 17th June, 1974, it was discovered that the plaintiff had lodged a private caveat on 27th May, 1974, in respect of the land held under Certificate of Title No. 245 Lot 947. On 4th July, 1974, the plaintiff filed a specially indorsed writ in the high court and had it served upon the defendant on 6th July, 1974. The relief sought for in the writ, in effect, is for the specific performance of the tenancy agreement of 1st April, 1964. The statement of claim refers to the agreement and alleges that the defendant had failed to keep in repair the premises as provided for in the agreement with the result that the said order from the Town Council declared the premises as dangerous for occupation. The plaintiff further claims for an order that the defendant do repair the premises in accordance with the requirements of the Town Boards Enactment so as to enable her to resume occupation and she avers that the notice issued by the defendant purporting to terminate the tenancy on 31st May, 1974, is null and void and of no effect. She further avers that although she has vacated the premises yet she is still legally in possession and that by reason of the provisions of the Control of Rent Act, 1966, she is entitled to occupy the premises even after the expiration of the 12 year tenancy. In her statement of defence and counterclaim the defendant avers, *inter alia*, that the plaintiff has not moved out of the premises as alleged by her and she seeks damages from the plaintiff for wrongful lodgment of the caveat and for the loss of the use of the balance of the purchase money.

On 29th July, 1974, the defendant applied to the court for the removal of the caveat under the provisions of section 327 of the National Land Code by way of summons-in-chambers. In support of her application the defendant filed an affidavit setting out the facts leading to the present application and submitted therein that the said tenancy agreement was void for want of registration under the National Land Code and that at the most the agreement of 1st April, 1964, could only be taken as a contract entitling her to some compensation for the remaining term of the tenancy. The defendant further states that the plaintiff has no registrable interest in the land entitling her to enter a caveat and the caveat should, therefore, be removed.

At the outset of the hearing Mr. P. S. Maniam, learned counsel for the plaintiff, raised a preliminary objection to the application by the defendant. He submitted that the procedure adopted for the removal of the caveat by way of summons-in-chambers was wrong and said that it should have been made by originating motion. In support of this objection Mr. Maniam cited the case of *Nanyang Development (1966) Sdn. Berhad* v. *How Swee Poh.*[1] In that case an application to remove a caveat was made by way of originating motion. The respondent raised a preliminary objection saying that the application should have been made not by originating motion but by originating summons and it was held by Raja Azlan Shah J. (as he then was) that where an Act of Parliament did not specify the form for making an application to court the application may as a matter of procedure be made in any form in which the court could be moved and that, therefore, the procedure by originating motion in that case was correct. His Lordship while stating that the procedure by way of originating motion was correct

did not make any ruling that an application may not be made by a summons-in-chambers in a pending action.

Mr. S. K. Lingam, learned counsel for the defendant, submitted that the application for the removal of the caveat by way of summons-in-chambers was correct and he referred to the case of *Tee Chin Yong* v. *Ernest Jeff.*[2] In that case an application was made by the plaintiff by way of summons-in-chambers for an order to extend caveats lodged by him in respect of certain lands. However, no objection was taken by the defendant in that case as to the mode of procedure adopted by the plaintiff and, therefore, the matter was not considered at all by the court.

There appears to be no direct authority on the point in issue in the application before me but I have had occasion recently to consider a somewhat similar objection raised by counsel for the defendants in *Chi Liung & Son Sdn. Bhd.* v. *Chong Fah & Sons Sdn. Bhd. & Anor.*[3] The defendants in these two suits had raised a preliminary objection on the ground that applications for extensions of certain caveats were improperly made by way of summons-in-chambers and it was submitted that the applications should have been made by originating motion or originating summons. After considering the submissions made by both sides I came to the conclusion that an application by way of summons-in-chambers was not wrong in procedure where there was a pending action in court relating to the very lands which were the subject matter of the caveat.

In the present case before me the plaintiff had entered a private caveat in respect of certain land in the town of Seremban. Her claims in the action filed in the High Court relate to the same land and the house on it and for certain consequential relief. In my judgment, the defendant's application by way of summons-in-chambers in the action in which the claims concern the same land as that affected by the caveat was quite in order. I, therefore, over-ruled the preliminary objection raised by Mr. P. S. Maniam on the question of procedure.

On the merits of the defendant's application for the removal of the caveat Mr. Maniam submitted that the plaintiff had the protection of the Control of Rent Act, 1966, in respect of the premises and, therefore, the *status quo* should be retained until the civil suit is heard and determined. He conceded that the tenancy agreement had not been registered under the provisions of the National Land Code but submitted that the agreement created contractual liabilities for which specific performance may be ordered by the court and thus the plaintiff had a registrable interest in the land and premises. In support of his submission Mr. Maniam cited *Halsbury's* Laws of England Third Edition Volume 23 pages 437-438 paragraphs 1035 and 1036 wherein authorities are cited to the effect that an agreement though not effective as to create a legal estate yet if it is of such a nature that specific performance may be granted by the court then the parties are treated as having the same rights and obligations as if a valid lease had been granted (*Walsh* v. *Lonsdale*[4]).

Mr. Lingam, on the other hand, submitted that the issue before the court was whether the plaintiff had a registrable interest or not. The tenancy agreement, he said, was not registered under the National Land Code and it was, therefore, void rendering the position of the plaintiff to that of a monthly tenant. Thus the plaintiff cannot claim to have any registrable interest. In support of this submission Mr. Lingam referred to the case of *Cheong Lep Keen & Anor.* v. *Tan Tin Kek*[5] where it was held that a lease for 80 years was void for want of registration and therefore the lessee was deemed to hold the premises on a monthly tenancy. This decision was upheld by the Federal Court. Mr. Lingam also referred to the case of *S.T.S.P. Raman Chettiar* v. *Teo Gee & Anor.*[6] wherein Thorne J. held that a lease for a term exceeding three years was not effective so as to vest any interest in land in the lessee unless it had been registered under the Johore Land Enactment.

Mr. Lingam also submitted that section 6 of the Civil Law Act, 1956, specifically prohibits the application of the English land law in this country and, therefore, the case of *Walsh* v. *Lonsdale, supra,* and the other cases referred to by Mr. Maniam in *Halsbury's* Laws of England Third Edition pages 437-438 should be ignored in the present case before this court.

On the validity of the caveat itself Mr. Lingam again referred to the case of *Tee Chin Yong* v. *Ernest Jeff, supra,* wherein Ismail Khan J. (as he then was) held that a person claiming an interest in a specific portion of a piece of land was not entitled to lodge caveats over the whole of the land and, therefore, the caveats being partially invalid such invalidity rendered those caveats wholly null and void and of no effect.

In my opinion the provisions of section 6 of the Civil Law Act, 1956, do not exclude the English equitable principle that a lease which is void at law for not having complied with legal formalities can be treated as an agreement for a lease which may be enforced in equity. Section 6 of the Civil Law Act, 1956, states that nothing in Part II of the Act (which provides for the application of the common law and the rules of equity in Malaysia) "shall be taken to introduce into Malaysia or any of the States comprised therein any part of the law of England relating to the tenure or conveyance or assurance of or succession to any immovable property or any estate, right or interest therein". What is precluded by section 6 is the English law relating to tenure or conveyance or assurance of or succession to any immovable property or any estate, right or interest therein but the section does not in any way preclude the application of the English principles relating to equitable interests in land.

In the recent case of *Inter-Continental Mining Co. Sdn. Bhd.* v. *Societe Des Etains De Bayas Tudjun*[7] the appellants had a permit to mining land from the respondents who were the lessees of the land and it was held by the Federal Court that the agreement, described as a Permit to Mine, was in substance a sublease though not in the statutory form and equity would treat it as an agreement for a sublease and specifically enforce it. It was held further that the

appellants, therefore, had a right in equity to a registrable interest in the land. In his judgment Gill F.J. (as he then was) referred to the case of *Parker* v. *Taswell*[8] wherein Lord Chelmsford L.C. said: —

"It must be borne in mind that this agreement has been partly executed by possession having been taken under it; and there are many authorities to show that in such a case the court will strain its power to enforce a complete performance.... The agreement, moreover, is admitted to be sufficiently certain as to all the substantial parts of it, and the only portions of it to which uncertainty is attributed are subordinate matters. No authority has been cited to show that in such a case specific performance may not be decreed."

Gill F.J. also referred to the case of *Lin Nyuk Chan* v. *Wong Sz Tsin*[9] where the parties had entered into a tenancy agreement for a period of 15 years of which the appellant had been in possession as a tenant for about 2 years when a dispute arose between the parties as to the rent of the premises. On the issue as to whether the tenancy agreement was valid and enforceable by way of specific performance Wylie C.J. (Borneo) had this to say: —

"When there has been part performance (and especially in cases where a tenant has gone into possession under an agreement to lease) a court of equity will not usually refuse to decree specific performance because of uncertainty as to some subsidiary matter, but will endeavour to give effect to the intention of the parties."

In the present case the parties had entered into a written tenancy agreement which was to run for a period of 12 years out of which the plaintiff had in fact occupied the premises for no less than 10 years. The agreement of 1st April, 1964, had thus been substantially performed by the plaintiff. There can be no doubt that the parties had the intention to create a lease in respect of the premises concerned. Equity would, therefore, treat the agreement as an agreement for a lease and specifically enforce it because equity looks upon that as done which ought to be done. In my judgment, therefore, the plaintiff has a registrable interest within the meaning of section 323(1)(a) of the National Land Code in respect of the portion of the land let out to her in Lot 947.

The defendant had served a notice to quit on the plaintiff purporting to determine the tenancy on 31st May, 1974, and the plaintiff was in real fear of being evicted by a third party in case the defendant sold the premises. The general scheme of the National Land Code is to provide for the indefeasibility of title of a registered proprietor of land and the plaintiff might have had no remedy against a third party purchasing the land from the defendant. The only way the plaintiff could protect her interest under the tenancy agreement was to obtain an injunction against the defendant or enter a caveat in respect of the portion of the land let out to her pending the determination of her suit against the defendant for the enforcement of the agreement of 1st April, 1964. The tenancy agreement, it is true, was not registered under the National Land Code; indeed, it could not have been registered because it was not in the statutory form. Nevertheless, as I have stated earlier, the plaintiff is entitled to enforce the agreement for the remaining period in equity as an equitable interest in land and pending that to enter a caveat on the portion of the land let out to her. In order to enter a caveat it was not necessary for the plaintiff to show that she was a party to a lease in the statutory form capable of registration under the Land Code. That she was party to a written agreement entitling her to an equitable interest in land was enough.

To revert to the *Inter-Continental Mining Co.* case *supra*, Gill F.J. said that —

"... the question as to what can be registered under the provisions of the National Lord Code has nothing whatever to do with the question as to whether an application can rightly be made for the entry of a caveat on the strength of any particular document which is incapable of being registered but may confer a right on one party of the agreement to require the other party to execute an instrument which can be registered."

Mr. Maniam had also submitted that the premises concerned being rent controlled and, therefore, the plaintiff having the protection of the Control of Rent Act, 1966, the *status quo* of the parties should be retained until the civil suit is heard. This would appear to be a valid argument if the plaintiff could show that the premises were rent controlled and that she had the protection of the Control of Rent Act but, with respect, I do not agree with Mr. Maniam's further submission that by reason of the protection that may be afforded to the plaintiff under the Control of Rent Act she is entitled to enter a private caveat as a person having a registrable interest in land. She may be in a position to seek some other remedy to keep the *status quo* until the civil suit is heard but she certainly cannot by reason of having the protection of the Control of Rent Act claim to be entitled to enter a caveat. Tenancies of controlled premises falling under the provisions of the Control of Rent Act are not registrable under the National Land Code.

I now come to the case of *Tee Chin Yong* v. *Ernest Jeff*, *supra*, cited by Mr. Lingam in support of his submission that the plaintiff's interest extended only to a portion of the premises and, therefore, the caveat entered in respect of the whole land rendered the caveat null and void. In that case the facts were that the plaintiff had sued the defendant for specific performance of an agreement for the sale to him of a portion of land comprised in two certificates of title registered in the name of the defendant. The plaintiff presented a caveat against each of the lands under section 166 of the F.M.S. Land Code, 1926, claiming an interest in them by virtue of the said agreement. Subsequently, the plaintiff was served with a notice requiring that the caveats be withdrawn within twenty-one days failing which the Registrar of Titles would remove the caveats unless an extension was obtained from the court. Upon the application by the plaintiff for an order that the caveats be extended until the disposal of the suit Ismail Khan J. (as he then was) held that a person claiming an interest in a specific portion of a piece of land was not entitled to lodge a caveat over the whole of the land and that, therefore, the caveats being partially invalid, such invalidity rendered those caveats wholly null and void and of no effect.

With respect, I agree entirely with the decision in *Tee Chin Yong* v. *Ernest Jeff*. Under section 323 (2) of the National Land Code a person wishing to apply for the entry of a caveat has to do so in a prescribed form specifying therein the nature of his claim and whether the caveat is to be expressed to bind the

land or a particular interest only. A person whose interest extends only to a specific portion of a piece of land is not entitled to enter a caveat over the whole of the land. The interest of the plaintiff in the present case before me extended to only a portion of the land in Lot 947 and her entry of a caveat against the whole of the land was, therefore, null and void and of no effect. The agreement of 1st April, 1964, did provide that the plaintiff, her employees, agents and customers shall have access to the rear portion of the premises and have the use of the kitchen, bathroom and lavatory but this privilege, in my view, did not amount to anything more than a mere licence which gave the plaintiff no right in the nature of an easement nor to any registrable interest of any kind under the provisions of the National Land Code. The Land Code provides for the entering of a private caveat to enable the caveator to protect his interest until his claim is adjudicated upon by the court. The entry of a caveat, nevertheless, is a blot on the title to the land concerned and the court will not permit that blot to be any larger than what the caveator is entitled to enter.

I, therefore, hold that the plaintiff whose claim is restricted to only a portion of the land is not entitled to enter a caveat over the whole of the land comprised in Lot 947 and I order that the caveat be removed forthwith.

Costs of the proceedings to the defendant.

Order accordingly.

Solicitors: *Atma Singh Gill & Gill; P. S. Maniam & Co.*

CENTRAL MALAYSIAN FINANCE BHD. v. LOKE KOK LAI

[O.C.J. (Hashim Yeop A. Sani J.) September 18, 1974]
[Kuala Lumpur — Originating Summons No. 191 of 1974]

Land Law — Charge of land as security for loan — Default in payment of instalments — Notice given in Form 16E — Demand for aggregate sum consisting of balance of principal and accumulated interest — Agreement in memorandum of charge for notice to be given under s. 254 of National Land Code — Whether notice valid — National Land Code, ss. 253, 254, 255 and 257(1).

The respondent had charged certain lands to the applicant as security for a loan of $1.6 million together with interest thereon. By the said charge the respondent agreed to repay on demand the balance sum which on the respondent's account was due and owing to the applicant in accordance with the terms of the said charge. It was also agreed that in the event of default, the applicant would give the respondent notice under section 254 of the National Land Code. The respondent having defaulted in the payment of his instalments, the applicant issued a notice in Form 16E of the National Land Code demanding payment of the sum of $1,419,749.88 and a further sum for interest to the date of payment or realization. Subsequently the applicant applied for an order for the sale of the land. One of the grounds of opposition by the respondent was that the applicant had used the wrong notice under the National Land Code.

Held: (1) in this case as the sum sought to be satisfied was the aggregate sum consisting of the balance of the principal sum together with interest accumulated as at that date the applicant should have used Form 16D and not Form 16E;

(2) the application was also defective on the grounds that the exact amount claimed was not specified in the application;

(3) the applicant covenanted to proceed in the first instance under section 254 of the National Land Code and therefore could not seek to act under section 255 of the Code without first issuing a notice of default.

Cases referred to:-

(1) *V.A.M. Hussain* v. *B.P. Malaysia Sdn. Bhd.* [1970] 2 M.L.J. 69.

(2) *Mary Michael* v. *United Malayan Banking Corporation* [1971] 1 M.L.J. 172.

ORIGINATING SUMMONS.

Ong Tatt Poh for the applicant.

K. K. Chong for the respondent.

Hashim Yeop A. Sani J.: This is an application for an order for sale under section 256 of the National Land Code 1965 by the Central Malaysian Finance Berhad in respect of land held under Certificate of Title No. 3104, Lot No. 1219, Mukim of Triang, in the district of Temerloh, Pahang, belonging to the respondent Loke Kok Lai and charged to the applicant under a first charge registered in the register of Land Office, Pahang, of Presentation No. 12250, Volume XV, Folio No. 51, to satisfy the sum of $1,419,749.88 due and payable as at 15th April, 1974 "together with a further sum being additional interest at the rate of 12% per annum with yearly rests shall be added thereon as from the 16th day of April, 1974, to the date of payment or realisation."

According to the affidavit of the applicant affirmed on 22nd May, 1974, a memorandum of charge of the said land in favour of the applicant was made by the parties as security for a loan of $1.6 million advanced by the applicant to the respondent together with interest at the rate of 10 per cent. with yearly rests in accordance with the terms of the said charge — "Exhibit A1" of affidavit. By the said charge the respondent is *inter alia* to repay on demand the balance sum which on the said respondent's account is due and owing to the applicant in accordance with the terms of the said charge. By virtue of the power given to the applicant by clause (3) of the annexure contained in the said charge the applicant had on the 14th day of June 1973 increased the rate of interest to 12% per annum with yearly rests. The respondent had defaulted in the payment of his instalments and after repeated reminders given by the applicant the respondent still failed to pay the instalments due as arranged. On or about the 18th of April 1974 the applicant caused a notice in Form 16E of the National Land Code 1965 to be issued to the respondent through its solicitors demanding payment of the sum of $1,419,749.88 as at 15th April 1974 with interest accruing within one month from the date of service failing which an order of sale would be applied for.

The respondent opposes the application on a number of grounds. Firstly, the respondent challenged the use of Form 16E and that therefore the applicant had used the wrong notice under the National Land Code, as not only the principal but also the interest were due and payable. Secondly, it was the contention of the respondent that the applicant had charged compound interest and interest at a rate more than 12% per annum thereby infringing the exemption grant-